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In the
Supreme Court of the United States

OCTOBER TERM, 1972

No. MISC.

KINNEY KINMON LAU, A Minor by and through MRS. KAM WAI LAU, his guardian ad Litem, et al.,
PETITIONERS,

v.

ALAN H. NICHOLS, et al.,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF AMICUS CURIAE OF THE CENTER FOR LAW AND EDUCATION, HARVARD UNIVERSITY IN SUPPORT OF THE PETITION

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Introduction

We present this brief in support of the petition for a writ of certiorari with the consent of all parties, pursuant

to Supreme Court Rule 42(1). Copies of the letters of consent are attached to our covering letter to the Clerk of this Court. We rely on the petitioners' treatment of this Court's jurisdiction, the questions presented for review, constitutional and statutory provisions involved and statement of the case.

The unreported order of the district court denying petitioners' motions for injunctive and declaratory relief and finding for the respondents on the merits is found at petitioners' motions for injunctive and declaratory relief and Court of Appeals affirming the district court's decision, District Judge Hill dissenting, is reported at 472 F.2d 909 (9th Cir. 1973).

Interest of Amicus Curiae

The Center for Law and Education, Harvard University, was created jointly by the Harvard Law School and the Harvard Graduate School of Education in 1969. The Center is funded by the United States Office of Economic Opportunity to work in conjunction with local legal service offices and other attorneys to promote reform in American education by working in the area of social policy and the law, especially on behalf of the poor. The Center's attorneys have concentrated on problems in the following areas: resource allocation, within and between school districts; racial discrimination; federal programs; "ability grouping"; excluded children; and bilingual education. Center personnel have participated in litigation, including the preparation of several amicus briefs; done research and writing; drafted legislation; and negotiated with public officials. The Center publishes a bulletin entitled *Inequality in Education*.

The Center has, during the past two years, become increasingly involved in the problems of minority children

who because of their linguistic and cultural background are not receiving the benefits of education. The Center's concern has led to extensive participation by Center attorneys in drafting the Massachusetts Transitional Bilingual Education Act, Massachusetts Acts and Resolves, ch. 1005 (November 4, 1971). That legislation, the first state-wide compulsory bilingual education program ever enacted, provided for a transitional training period of education in the bilingual child's native language during which period the child would learn English language skills appropriate to his or her grade level. Center attorneys have also been extensively involved in litigation concerning the educational problems of non-English speaking children with one attorney devoting full time to the educational problems of American Indian children, and the Court of Appeals opinion in this case referred to the *amicus curiae* brief filed by the Center, 472 F.2d 909, 911, 914-15, 919.

The Center's work has given us experience in evaluating the constitutionality of educational practices. In addition, the Center's affiliation with the Harvard Graduate School of Education facilitates our presenting to courts educational data which is material under governing legal principles. In this brief we present educational data bearing on the educational harm which plaintiffs now suffer as the result of the defendants' educational policies as well as a discussion of cases in the education law area which bear on this action.

Our recent sampling of neighborhood legal service offices indicates that over 20 such offices are presently actively involved in litigation concerning the educational rights of non-English speaking poor children. This demonstrates that equal educational opportunities for non-English speaking children are a matter of substantial concern to the poor. Therefore, the filing of this brief permits

the Center to present an argument on a matter substantially affecting the quality of education afforded the poor.

Reasons for Granting the Writ

A. The Court of Appeals Decided Important Questions of Federal Law Which Have Not Been But Should Be Settled by this Court.

This case concerns the meaning of "equal educational opportunity" as it applies to the linguistic exclusion of 1800 non-English speaking Chinese students from the educational process in the San Francisco schools. That their exclusion is both severe and unconstitutional will be the main thrust of this brief. What must be made clear at the outset, however, is that the issue involved in this case is one of great importance to the Nation as a whole and particularly to millions of non-English speaking minority group children.[1]

Recently the United States Senate Select Committee on Equal Educational Opportunity completed three years of investigation into the way American public education serves minority group children. In its final report the

[1] The U.S. Department of Health, Education and Welfare has estimated that there may be five (5) million public school children in the country who speak a language other than English in their homes. U.S. Department of Health, Education and Welfare, "Draft: Five-Year Plan, 1972-77: Bilingual Education Program" (August 24, 1971). Among those directly affected by the decision below are many of the approximately 740,000 Spanish surnamed students in Arizona, California, Idaho, Montana, Nevada, Oregon and Washington — or 37% of the total number of Spanish surnamed students in the United States. United States Commission on Civil Rights, Mexican American Education Study (April, 1971) p. 16. Also affected will be many of the 64,000 American Indian children in those states — approximately 33% of the total number of Indian students nationally. Report of the Committee on Labor and Public Welfare and Committee on Interior and Insular Affairs, S. Rep. No. 92-384, 92d Congress, 1st Sess. (1971), at 23-24.

Committee stated: "It is the conclusion of this committee that some of the most dramatic, wholesale failures of our public school systems occur among members of language minorities . . . [w]hat these conditions add up to is a conscious or unconscious policy of linguistic and cultural exclusion and alienation."[2]

The findings of the Senate Committee are amply buttressed by the weight of expert educational opinion. Thus the evidence indicates that children between the ages of five and seven use language at an accelerating rate for purposes of problem-solving. When ideas are being formed in one language, it is difficult to state them in another, and the child's unsuccessful attempts at translation may lead to great frustration and loss of interest in expressing ideas.[3] When a school instructs in a second language be-

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[2] Report of the Select Committee on Equal Education Opportunity, S. Rep. No. 92-000, 92d Cong., 2d Sess. (1972), at 277. The Committee found that twenty-three percent of the total school enrollment in New York City is made up of Puerto Rican children. Yet in 1963 only 331 of 21,000 (1.6%) "academic" diplomas granted in New York went to such children. Hearings Before the Senate Select Committee on Equal Educational Opportunity, 91st Cong., 2nd Sess., pt. 8, at 3726 (1970). In other cities the picture is no brighter. In Newark, for example, there were 7,800 Puerto Rican students in the public school system but only 96 survived to the 12th grade while in Chicago the dropout rate among Puerto Rican students approached sixty percent. *Id.* at 3685. Among Mexican Americans the language barrier poses equally severe educational difficulties. Some fifty percent of this group never go past the eighth grade. In Texas, for instance, forty percent of the Spanish-speaking citizens are described as "functional illiterates." *Id.* at Part 4, 2400.

And among Cherokee Indians the school dropout rate runs to seventy-five percent with illiteracy among adults at forty percent. Report of the Special Subcommittee on Indian Education of the Senate Committee on Labor and Public Welfare, S. Rep. No. 501, 91st Cong., 1st Sess. (1969), at 19.

[3] See Vera P. John and Vivian M. Horner, *Early Childhood Bilingual Education* (Modern Language Association of America, 1971), 171; Joan T. Feely, "Teaching Non-English Speaking First Graders to Read," *Elementary English* (1970), 207; Anne Anastasi and Fernando A. Cordova, "Some Effects of Bilingualism Upon The Intelligence Test Performance of Puerto Rican Children in New York City," *The*

fore a child has developed adequate cognitive skills in his native language, the child may become a "non-lingual" whose functioning in both his native and second language develops in only limited ways.

And while the literature is not conclusive as to the age at which a child should attempt to learn a second language, it is significant that no support could be found for simply allowing non-English speaking youngsters to sit, uncomprehending in the classroom as is the case here.

Yet this Court needs no expert opinion to understand the reason why millions of linguistic minority group children do not succeed in our public schools. For education is, in its essence, an "exchange of ideas which discovers truth . . ." and "the classroom is peculiarly the 'marketplace of ideas.'" *Keyishian* v. *Board of Regents of the University of the State of New York*, 385 U.S. 599, 603 (1967). To deny to one class of children the chance to communicate ideas, to speak with classmates, to ask questions and comprehend answers, to receive instruction from teachers must necessarily place that class of children at a severe educational disadvantage. That that disadvantage makes for educational opportunities unequal to those of majoritarian students who come from English speaking homes is patently obvious. That this is the case when it need not be so, that petitioners could have the same opportunity for educational success as English-speaking students is part of a national tragedy. That the respon-

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Journal of Educational Psychology, Vol. XLIV (1953), 15, 16; Sheldon H. White, "Some General Outlines of the Matrix of Developmental Changes Between Five and Seven Years," *Bulletin of the Orton Society* (1970), 20, 41-57. John MacNamara, "Effects of Instruction in a Weaker Language," *The Journal of Social Issues*, Vol. XXIII (1967), 22, 132; Sheldon H. White, "Evidence for a Hierarchical Arrangement of Learning Processes," in L. P. Lipsett and C. C. Spiker, eds., *Advances in Child Development and Behavior*, Vol. II (New York: Academic Press, 1965).

dents have denied them that opportunity requires this Court to review the decision of the Court below.

B. THE COURT OF APPEALS DECIDED FOURTEENTH AMENDMENT ISSUES IN A WAY IN CONFLICT WITH DECISIONS OF THIS COURT.

1. The Decision Below Improperly Constricts This Court's Rulings in *Sweatt* v. *Painter*, 339 U.S. 629 (1950), *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 637 (1950) and *Brown* v. *Board of Education*, 347 U.S. 483 (1954).

In its discussion of *Brown* v. *Board of Education*, 347 U.S. 483 (1954) the Court below has supplied to *Brown* a meaning so narrow as to gut that case of both its historical and logical essence. For the majority of the Court of Appeals panel, *Brown* meant only that state enforced segregation was no longer to be allowed and hence in this case that ". . . the Equal Protection Clause extends no further than to provide [children who speak no English] . . . the same facilities, textbooks, teachers and curriculum as is provided to other children in the district." *Lau* v. *Nichols*, 472 F.2d 909, 916, (9th Cir. 1973).

Certainly one important basis for *Brown* was that compulsory racial separation is *per se* discriminatory against black people. This is so because "[s]egregation in public education is not reasonably related to any proper governmental objective . . ."[4] and thus imposes an arbitrary and invidious classification upon those subject to the segregation.

We believe however, that the concept of equal educational opportunity as it has been developed in the decisions of this Court must also embrace any regimen of

[4] *Bolling* v. *Sharpe*, 347 U.S. 498, 500 (1954)

compulsory public education which by its nature denies to an identifiable ethnic minority group the same chances for classroom success as is afforded the majority of its students. To reach any other conclusion would be to ignore the very rationale which this Court used in reaching its decision in *Brown*.

In *Brown* the Court was faced with racial segregation of students in a setting in which, "the Negro and white schools involved have been equalized . . . with respect to buildings, curricula, qualifications and salaries of teachers, and other 'tangible' factors." *supra* at 492. Refusing to limit its inquiry to such "tangibles" the Court began its analysis with a discussion of earlier cases in which black graduate students had been denied equal educational opportunities. The Court said:

> In Sweatt v. Painter, supra [339 U.S. 629, 70 S. Ct. 850], in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In McLaurin v. Oklahoma State Regents, supra [339 U.S. 637, 70 S. Ct. 853], the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: "* * * his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession."

The Court continued, "[s]uch considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect

their hearts and minds in a way unlikely ever to be undone." *supra* at 493. Thus the Court made it clear that any analysis of equal educational opportunity would look behind mere surface equality of facilities to the crucial, often intangible, factors which go to make up the educational experience. When one racial group was systematically deprived of opportunities to enjoy such intangible factors the existence of some other equality of facilities was irrelevant. In *McLaurin* v. *Oklahoma State Regents, supra* the fact that the appellant "uses the same classroom, library and cafeteria as students of other races; there is no indication that the seats to which he is assigned in these rooms have any disadvantage of location" did not deter the Court from finding an Equal Protection denial in restrictions which impaired the appellant's ability to study and engage in discussions. Here the mere surface equality of "facilities, textbooks, teachers and curriculum" cannot foreclose this Court from looking at the absolute impairment of these non-English speaking childrens' ability to function in their classroom society. Indeed in many ways the deprivation of educational opportunity suffered by these petitioners is so severe that one could argue that *Sweatt* and *McLaurin* standing alone compel reversal of the Court below. In any event it is difficult to understand how one can read the reliance on those earlier cases in *Brown* and still apply an Equal Protection analysis which ignores the reality of inequality which the school system itself has recognized.[5]

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[5] Although the opinion below is the first instance we are aware of in which a lower Federal court has ignored the *Brown* findings of denial of equal educational opportunity, attempts to limit *Brown* are not unknown. In *U. S.* v. *Jefferson County Board of Education*, 372 F.2d 836 (5th Cir. 1966), *aff'd on rehearing en banc*, 380 F.2d 385 (1967), *cert. denied sub nom. Caddo Parrish School Board* v. *United States*, 389 U.S. 840 (1967) the Court was faced with a construction of *Brown* which focused only on the harmful consequences of segregation. In making clear that segregation was *per se* prohibited by

2. *The Decision Below Ignores The Respondents' Responsibility For The Lack Of Equal Educational Opportunity Being Suffered By The Petitioners.*

According to the Court of Appeals, "[e]very student brings to the starting line of his educational career different advantages and disadvantages caused in part by social, economic and cultural background, created and continued completely apart from any contribution by the school system." *Lau* v. *Nichols, supra* at 915. Thus the Court reasoned these childrens' inability to function in the classroom stems from their failure to learn English before reaching the schoolhouse and not from any state action by the respondents. The issue for the purpose of Equal Protection analysis, however, is not what advantages or disadvantages these children bring to the starting line but whether the rules of the race create an unequal chance for success for certain national origin groups. And it is the respondents who have knowingly made the rules which guarantee that these Chinese speaking children will compete with a handicap which is absolute, arbitrary and unrelated to the goals of public schooling. For what respondents have done is create two classifications of students —those from English speaking ethnic backgrounds who will be able to comprehend the language of the classroom and those from non-English speaking minority groups who will

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the Equal Protection Clause the Court stated that: "The *Brown I* finding that segregated schooling causes psychological harm and denies equal educational opportunities should not be construed as the sole basis for the decision." *supra* at 871. Here the Court below has implicitly concluded that the finding of harmful consequences constituted no part of the basis for the *Brown* decision. Such a result would render meaningless the concept of equal education opportunity for non-English speaking minority group children. And as the Court in *United States* v. *Jefferson County Board of Education, supra* refused to interpret *Brown* narrowly to the detriment of black children, this Court must not acquiesce in an even more cramped view of *Brown* as it affects other minority children.

neither understand the language of instruction nor be given any help in learning that language. The standard by which such classifications are to be judged will be discussed below in section 3. However it cannot seriously be contended that the respondents have *no* responsibility for these classifications.

Thus the school system has made a choice not to teach these petitioners how to speak English. That the respondents have other choices is clear. Instruction in how to speak English for non-English speaking students is routinely conducted in many schools throughout this country.[6] Indeed San Francisco must be aware of some of the many possible instructional techniques from its own Chinese Bilingual Pilot Program. That nearly 1800 non-English speaking Chinese students receive *no* such instruction necessarily results from a choice by the respondents to deny them the benefits of *any* of these several instructional methods. Thus in setting priorities and allocating resources respondents have guaranteed the result which they themselves have recognized—that non-English speaking Chinese students become part of a separate class of children "frustrated by their inability to understand the regular classwork (and for whom) the lack of English means poor performance in school."[7]

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[6] For instance, see the techniques developed in programs described in U.S. Department of Health, Education and Welfare, *PREP Report No. 31, Early Childhood Programs for Non-English Speaking Children* (1972); U.S. Department of Health, Education and Welfare, *Model Programs — Compensatory Education Series* (1972); U.S. Department of Health, Education and Welfare, *Profiles in Quality Education* (1968).

[7] [W]hen these [non-English-speaking Chinese] youngsters are placed in grade levels according to their age and are expected to compete with their English speaking peers, they are frustrated by their inability to understand the regular classwork . . . for [these] children, the lack of English means poor performance in school. The secondary student is almost inevitably doomed to be a dropout and become another unemployable in the ghetto.

And while we agree with the petitioners that the Court below was in error in thinking that discriminatory intent is necessary to a finding of denial of equal educational opportunity,[8] it seems clear that the classification knowingly created by the respondents' refusal to provide any language instruction to these petitioners comes very close to the kind of process which courts have found to be legally indistinguishable from intentional discrimination.[9]

3. *The Decision Below Failed To Give Adequate Weight To The Fact That Petitioners' Disabilities Are Suffered As Members Of A Distinct Ethnic And National Origin Group.*

The decision below makes no mention of what standard of review the Court of Appeals employed in its Equal Protection analysis. Nonetheless, this Court for nearly 100 years has not hesitated to look behind a facially neutral state law when the burden of such law was felt by one

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San Francisco Unified School District, *Pilot Program: Chinese Bilingual*, pp. 3A, 6A (May 15, 1969), Plaintiffs' Exhibit No. 5.

The Courts have recognized the Constitutional implications of the educational harms suffered by non-English speaking children. In *Diana* v. *State Board of Education*, Civil Action No. C-7037 RFP (N.D. Cal. Feb. 2, 1970) and *Guadalupe Organization* v. *Tempe Elementary School District No. 3*, No. Civ. 71-435 (D. Ariz., Jan. 24, 1972), plaintiffs alleged improper classification in English. As a result, Spanish-speaking youngsters with normal or above normal intelligence were receiving the limited instruction afforded the mentally retarded. In both cases, the parties reached agreements which were adopted as orders of the court alleviating the misclassifications. cf. *U. S. Ex Rel Negron* v. *State of New York*, 434 F.2d 386 (2d Cir. 1970).

[8] Mr. Justice Stewart has stated that a state's actions in this context will be judged by its "purpose *or* effect." *San Antonio Independent School District* v. *Rodriguez*, 41 U.S. Law Wk. 4407, 4425 (1973). (Concurring opinion of Mr. Justice Stewart) (emphasis added).

[9] "When the power to act is available, failure to take the necessary steps so as to negate or alleviate a situation which is harmful is as wrong as is the taking of affirmative steps to advance that situation. Sins of omission can be as serious as sins of commission." *Davis* v. *School District of City of Pontiac*, 309 F. Supp. 734, 741 (D.C. Mich., 1970), *affirmed*, 443 F.2d 573 (6th Cir. 1971), *cert. denied*, 404 U.S. 913 (1971).

particular ethnic or national origin group. In *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886) the Court found in the actual effect of San Francisco's laundry licensing ordinance a denial of the protection of equal laws to Chinese laundrymen.[10] In *Yu Cong Eng* v. *Trinidad*, 271 U.S. 500 (1926), a Philippines ordinance required the keeping of business account books in English, Spanish or a local dialect. Despite the obvious usefulness of the ordinance in assisting local tax collection and auditing, the Court focused on the discriminatory impact which the ordinance had on Chinese merchants, an impact which was found to deny them Equal Protection of the laws.

In *Yick Wo, supra, Yu Cong Eng, supra,* and other national origin cases, the Court showed a willingness to study the actual impact of the questioned ordinances which we now refer to as "close judicial scrutiny," *Graham* v. *Richardson*, 403 U.S. 365, 371 (1971).[11]

And only recently in *San Antonio Independent School District* v. *Rodriguez*, 41 U.S. Law Wk. 4407 (1973) the Court indicated its willingness to apply close scrutiny when presented with a class defined by the "traditional indicia of suspectness," *supra* at 4415, see also the concurring opinion by Mr. Justice Stewart, *supra* at 4425. As the cited cases make clear, national origin is such a class.

Moreover, the impact of this classification upon Chinese students is not a mere coincidence. For the Chinese have long been "subjected to [such] a history of purposeful unequal treatment," *supra* at 4415, treatment which bur-

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[10] Even earlier Mr. Justice Field found that an ordinance providing for uniform one inch haircuts for male prisoners placed an unequal and hence unconstitutional burden on Chinese Queue wearers — this although the ordinance was defended on both sanitary and security grounds. *Ho Ah Kow* v. *Nunan*, 12 F.Cas. 252 (C.C.D. Cal. 1879).

[11] Other cases have developed the principal that national origin classifications are "suspect" thus calling for "the most rigid scrutiny." *Korematsu* v. *United States*, 323 U.S. 214, 216 (1945), *Oyama* v. *California*, 332 U.S. 633, 644-46 (1948).

dened them in schools as well as business and which often focused on their language as the crucial aspect of their ethnicity enabling discriminatory burdens to be imposed.

"Historically, California provided for the establishment of separate schools for children of Chinese ancestry. That was the classic case of *de jure* segregation involved in *Brown* v. *Board of Education* . . ." *Lee* v. *Johnson*, 92 S. Ct. 14, 15 (1971) (Per Douglas, J. as Circuit Judge on application for stay). Thus, until repealed in 1947[12] (1947 Cal. Stats. c. 737 §1) the California Education Code provided for the racial separation of Chinese school children. As the California Supreme Court recently noted in *Castro* v. *State*, 85 Cal. Rptr. 20, 466 P. 2d 244 (1970) fn. 11, prejudice against the Chinese in California has at times been rampant. In *People* v. *Hall*, 4 Cal. 399, 404-405 (1854) Chief Justice Murray described plaintiffs' race as follows:

> . . . a distinct people whose mendacity is proverbial; a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point, as their history has shown: differing in language, opinions, color, and physical conformation; between whom and ourselves nature has placed an impassable difference . . .

Not only were the Chinese the object of legislative and

[12] And "In the *Guey Heung Lee* case it was apparent that the force of that custom had not been spent even though the statute providing for the establishment of separate schools had been repealed, because the San Francisco school board continued meticulously to draw racial lines in spite of the repeal of the statute." *Gomperts* v. *Chase*, 92 S.Ct. 16, 17 (1971) (Per Douglas, J. as circuit justice on application for preliminary injunction). For a history of the segregation of the Chinese in the California public schools see Gunther Barth, *Bitter Strength: A History of the Chinese in the United States, 1850-1870* (Harvard University Press, 1971), Charles C. Dobie, *San Francisco's Chinatown* (D. Appleton-Century Co., 1936), and Charles Wollenberg, *Ethnic Conflict in California History* (Tinnon-Brown, 1970).

judicial scorn, but early on, their language was seized upon by those who would impose disabilities upon them. For instance, the California Constitution of 1879 excluded Chinese immigrants from voting. When it later appeared that the children of the original Chinese immigrants might qualify as voters, the legislature passed an English-only literacy test as a voting requirement. See *Castro* v. *State*, *supra* at fn. 11.

And at the same time as statutes provided for the segregation of Chinese students in schools, other statutes provided for the segregation of their language. Indeed until the current version of the California Education Code §71 was enacted in 1967 the teaching by languages other than English was prohibited.[13]

In finding no link between this past history and the present classroom situation of the petitioners, *Lau* v. *Nichols*, *supra* at 914-15, the Court below ignored the relevance of historical national origin discrimination as a determinant of the proper standard of review for Equal Protection purposes.

4. *No Rational Basis Has Been Shown For Respondent's Failure To Provide Petitioners With The Tools of Education.*

Because of respondent's failure to teach English to the petitioners, the public schools of San Francisco may be fairly described as rewarding those children who come from English speaking homes and penalizing those children who do not. The reward for the English speakers is comprehensible education—teachers, books, questions, ideas,

[13] See, e.g., 1943 California Education Code § 8251: "All schools shall be taught in the English language." See generally Harold R. Isaacs, *Scratches on Our Minds* (John Day, 1958) for a description of American attitudes toward the Chinese.

communication which can be understood. The penalty for those from Chinese speaking homes is the deprivation of these essentials of schooling. Those from English speaking homes become the "actors" while the Chinese students are relegated to mere physical presence as audience to a strange play which they do not understand.[14] This reward system can only be rational, however, if the state has a legitimate purpose in teaching English and other subject matter only to those of its students who come from English speaking national origin groups. No such purpose has been suggested.

Conversely, the application of a single "equal" standard to "unequal" individuals makes sense only in so far as the basis for applying the standard is a common characteristic of those individuals rationally related to the state's objective. Here mere physical ability to sit in a classroom seat together with English speaking pupils is used as the basis for forcing petitioners to submit to teaching which they cannot possibly understand. Unless the purpose of education is somehow reduced to detaining petitioners for a certain number of hours each day in a classroom, the application to them of teaching geared to children who already speak English is irrational, arbitrary and invidious classification.[15]

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[14] 射箭要看靶子，弹琴要看听众。

[15] The Due Process clause also may be offended when compulsory school attendance is coupled with a denial of educational opportunities. *Mills* v. *Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C., 1972). Compare *Inmates of Boys' Training School* v. *Affleck*, 346 F. Supp. 1354 (D.R.I. 1972) (Due process violation in failure to provide rehabilitation and education for juvenile inmates), with *Wyatt* v. *Stickney*, 325 F. Supp. 781 (M.D. Ala., 1971) (right to treatment in mental institutions).

Conclusion

For the reasons expressed in this brief and in the petition, this Court should agree to review the decision of the Court of Appeals for the Ninth Circuit in this case.

Respectfully submitted,

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April, 1973